others may be abrogated. Treaties of commerce and navigation are usually included either among those which are suspended or among those which are abrogated. The New York court adopts a sensible pragmatic test, commended by several of the modern writers on international law, and holds that treaty provisions compatible with a state of hostilities, unless expressly terminated, should be enforced by the courts and those incompatible rejected. The mere fact that other provisions of the same treaty must be suspended or even abrogated is not conclusive. In the words of Mr. Justice Cardozo, "International law today does not preserve treaties or annul them, regardless of the effects produced. It deals with such problems pragmatically, preserving or annulling as the necessities of war exact. It establishes standards, but it does not fetter itself with rules." In *Techt* v. *Hughes* the New York Court of Appeals has contributed an admirable decision and an illuminating precedent.

LANDLORD AND TENANT—TENDER OF RENT BY HOLDING-OVER TENANT—ACCEPTANCE BY LANDLORD OTHERWISE THAN AS RENT.—Lessor gave notice properly for tenant to quit premises. Tenant held on and sent rent to lessor who retained it but insisted that he was receiving the money not as rent but for use and occupation. In an action to recover possession of the premises, *held,* even though the lessor denied recognition of the tenancy as existing, the acceptance of the money operated as a waiver of the notice to quit. *Hartell* v. *Blackler,* [1920] 2 K. B. 161.

So also in the case of *Croft* v. *Lumley,* 5 E. & B. 648, where the lease was forfeited by breach of covenants, the lessor was held to waive the forfeiture by retaining money paid as rent, though he insisted he accepted it not as rent but for use and occupation. In that case the judges applied the maxim: "Money paid is to be applied according to the express will of the payer, not of the receiver." "Such acceptance operates as a matter of law to waive all forfeitures then known to the lessor, notwithstanding any protest on his part against such waiver," WOODFALL, LANDLORD AND TENANT. Generally any recognition by a lessor of a tenancy as existing, after a right of entry has accrued and lessor has notice of the forfeiture, will have the effect of a waiver. *Dermott* v. *Wallach,* 1 Wall. 61. So the acceptance of rent by a lessor is waiver of forfeiture or notice to quit. The landlord affirms that the lease is still in effect by accepting rent. *McGlynn* v. *Moore,* 25 Cal. 384; *Totalis* v. *Cannellos,* 138 Minn. 179. And this even though the lessor expressly remonstrates against it being a waiver of a prior cause of forfeiture. *G. C. & S. F. Ry. Co.* v. *Settegast,* 79 Tex. 256. But payment must be made as rent. It is not waiver if made as compensation for use and occupation. *Kenny* v. *Sen Si Lun,* 101 Minn. 253; *Croft* v. *Lumley,* 5 E. & B. 648. To render acceptance of rent waiver of forfeiture, at time of acceptance the lessor must have knowledge of the cause of forfeiture. *German-American Bank* v. *Gollmer,* 155 Cal. 683.

LANDLORD AND TENANT—WASTE.—The lessee of a building with office space on the second floor planned to alter the second story for a sublessee by

cutting windows and doors in a party wall to connect the building with the adjoining structure. The lessor, claiming this alteration would materially injure the building and increase insurance costs, sought an injunction. *Held,* the lessee is guilty of waste, for the common law rule that a tenant is guilty of waste if he materially changes the nature and character of the building, is the law in Alabama. *F. W. Woolworth Co.* v. *Nelson,* (Ala., 1920) 85 So. 449.

The old common law interpretation of waste was applied with strictness. If a tenant converted arable land into wood, or meadow into plow or pasture land, even though he thus enhanced the reversioner's or lessor's estate, it was waste, because it was held to endanger the evidences of title. BEWES, LAW OF WASTE, p. 10; *London* v. *Greyme,* (1607) Cro. Jac. 181. As early as 1803 a North Carolina court announced that the definition of waste under the common law in England was inapplicable in America where conditions were so different. *Ward* v. *Sheppard, 2* Hayward 283. An act of a tenant which was "not prejudicial to the inheritance" was held no waste. *Pynchon* v. *Stearns,* 11 Metc. (Mass.) 304; *Clemence* v. *Steere,* 1 R. I. 272. Even England relaxed the severity of its ancient rule. *Doherty* v. *Allman,* (1878) 3 App. Cas. 709. Today one group of courts agree with the holding in the instant case on similar facts. *Peer* v. *Wadsworth,* 67 N. J. 191; *Hamburger* v. *Settegast,* (Texas) 131 S. W. 639. The general tendency, though, has been to restrict the application of the old law of waste, and to adapt the law to the conditions of a new and growing country. TIFFANY, REAL PROP., p. 561; *Pynchon* v. *Stearns, supra.* Under the more modern view to constitute waste the alterations must be of a material and permanent nature, and must so change the property as to depreciate the value of the inheritance. TIEDEMAN, REAL PROP., [2nd Ed.] Sec. 73. Whether an act is detrimental to the lessor and is therefore waste is a question of fact for the jury. I WASHBURN, REAL. PROP., [5th Ed.] 153; *Melms* v. *Pabst Brewing Co.,* 104 Wis. 7. At the present time it is to the interest of the public that a tenant should be hampered as little as possible by restrictions vexatious to him without being of proportional advantage to his lessor, who can, if he desires, protect himself by definite covenants in the lease. Modern authority seems to be fast realizing the reasonableness of this view, and the narrowness of the view of the principal case.

LIBEL AND SLANDER—PUBLICATION TO EMPLOYEES OF DEFENDANT—CONDITIONAL PRIVILIEGE.—The plaintiff was the addressee and receiver of a libellous letter written partly by the bookkeeper and partly by the general manager of the defendant corporation; the letter before being mailed was shown to the bookkeeper and the collector for the purpose of ascertaining whether the statements were in conformity with the facts as they understood them. *Held,* the occasion was conditionally privileged, and, there being no malice, the publication of the letter was not actionable. *Globe Furniture Co.* v. *Wright,* (C. A., Dist. of Col., 1920) 265 Fed. 873.

In solving such a case two questions present themselves: is the communication of a libellous letter by one employee of a corporation to another employee of the corporation in the ordinary course of business a publication by the corporation? If such a communication is a publication, is it condi-